



Deval L. Patrick, Governor
Timothy P. Murray, Lt. Governor
Richard A. Davey, Secretary & CEO

massDOT
Massachusetts Department of Transportation

June 27, 2012

Michael Morisy
MuckRock News
DEPT MR 1402
P.O. Box 55819
Boston, MA 02205-5819

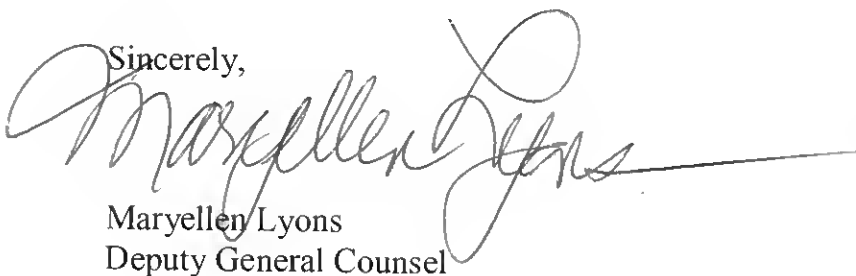
RE: Public Records Request for copy of contracts between MassDOT and businesses or other organizations that have covered the toll costs for MassPike drivers as part of a sponsorship opportunity or other agreement, Case#12-0467

Dear Mr. Morisy:

Enclosed please find copies of the public records that you requested on 6/23/2012.

Thank you for your attention to this matter.

Sincerely,



Maryellen Lyons
Deputy General Counsel

Enclosure: Public Records Response

**Massachusetts Department of Transportation
Sponsorship Agreement
With
Zappos Development, Inc.**

This Agreement ("Agreement") is dated as of the 15th day of November 2011, (the "Effective Date") by and between the Massachusetts Department of Transportation, a body politic and corporate and public instrumentality organized and existing under the laws of the Commonwealth of Massachusetts, having an address of 10 Park Plaza, Suite 4160, Boston, Massachusetts 02116 ("MassDOT"), and Zappos Development, Inc., a Delaware corporation, having an address of 2280 Corporate Circle #100, Henderson, Nevada 89074 (the "Sponsor"), collectively (the "Parties").

WHEREAS, Zappos is an online retail company that sells clothing, shoes and other consumer items;

WHEREAS, MassDOT is responsible for certain roadways within the Commonwealth of Massachusetts, including the portion of roadway where the toll booth at Interchange 19 on the Massachusetts Turnpike is located, pursuant to Chapter 6C of the Massachusetts General Laws, *G.L. c. 6C, et seq.*;

WHEREAS, the Sponsor desires to host a promotional marketing activity by paying for all tolls and Fast Lane charges incurred by vehicles passing through toll Interchange 19 on the Massachusetts Turnpike, in both the east bound and west bound directions, on Wednesday, November 23, 2011, between the hours of 5:00 p.m. and 7:00 p.m. Eastern time; and

WHEREAS, the Parties now desire to enter into this Agreement to describe the nature and scope of the Sponsorship Activities and related matters.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Sponsorship Activities

The Sponsor shall pay for all tolls and Fast Lane charges incurred by all vehicles passing through toll Interchange 19 on the Massachusetts Turnpike, in both the east bound and west bound directions, on Wednesday, November 23, 2011, between the hours of 5:00 p.m. and 7:00 p.m. Eastern time.

Compensation shall be paid from the Sponsor to MassDOT in accordance with this Agreement.

The Sponsor shall, at Sponsor's sole expense, pay all costs associated with the Sponsorship Activities, except where expressly otherwise provided in this Agreement.

All payments shall be made in advance of the Sponsorship Activities, by Sponsor to MassDOT. The estimated total due in advance from Sponsor to MassDOT is \$28,300.00. All payments required to be made in advance from Sponsor to MassDOT shall be made and received by MassDOT's Contract Officer no less than ten (10) days in advance of the Sponsorship Activities. Payments for each item under this Agreement shall be made in the form of separate checks.

Sponsorship Fee

The Sponsor shall pay to MassDOT a one-time fee in the amount of \$5,000.00.

Tolls and Fast Lane Charges

The Sponsor shall deliver payment in the amount of \$22,500.00, as estimated payment for the tolls and Fast Lane charges incurred during the Sponsorship Activities. No later than ten (10) days after the close of the sponsorship Activities, MassDOT shall provide written certification from the Contract officer certifying the amount of tolls and the Electronic Toll Collection payments incurred during the Sponsorship Activities (the "Certification"). In the event that the actual cost of the tolls and Fast Lane charges during the Sponsorship Activities exceeds the amount of \$22,500.00, MassDOT shall so notify the Sponsor, in writing, and the Sponsor shall deliver payment in the amount of the excess costs to MassDOT's Contract Officer no later than three (3) business days after receipt of the notification to the Sponsor. In the event that the tolls and Fast Lane charges are less than the amount of \$22,500.00, MassDOT shall refund the Sponsor any difference, minus any other money owed from the Sponsor to MassDOT under this Agreement, if any, no later than three (3) business days after receipt of the notification.

Police Details

The Sponsor shall pay to MassDOT the entire cost of all police detail(s), which are determined to be necessary in MassDOT's sole discretion, in relation to the Sponsorship Activities. Unless MassDOT determines otherwise, there shall be two (2) police details, lasting a duration of four (4) hours each. The Sponsor shall deliver payment in the amount of \$500.00, as payment for the police detail(s). In the event that the cost of the police detail(s) exceeds the amount of \$500.00, the Sponsor shall deliver payment in the amount of the excess cost to MassDOT's Contract Officer no later than three (3) business days after the close of the Sponsorship Activities. In the event that the cost of the police detail(s) is less than the amount of \$500.00, MassDOT will refund to the Sponsor any difference, minus any other monies that may be owed from the Sponsor to MassDOT under this Agreement no later than five (5) business days after close of the Sponsorship Activities. MassDOT shall coordinate the State Police details provided in relation to this Agreement.

Signage

MassDOT shall have the right to reasonable approval as to content and sole discretion as to location, and all other aspects of the signage posted in relation to the Sponsorship Activities.

The Sponsor shall produce, at its sole cost, temporary signage for use during the Sponsorship Activities. All aspects of said temporary signage, including, but not limited to, its volume, shape, size, color, intended placement, and content must be approved in advance by the MassDOT and its Contract Officer. The Sponsor shall pay to MassDOT the entire cost of overtime labor of MassDOT's employees, in connection with installation and removal of the signage. The Sponsor shall deliver payment in the amount of \$300.00, as payment for said labor in relation to the temporary signage for the Sponsorship Activities.

MassDOT shall supply two (2) portable safety signage boards, one (1) in the east bound direction and one (1) in the west bound direction, during the Sponsorship Activities. The portable safety signage boards shall read "Tolls Paid by Zappos," or contain some other similar content, as determined to be appropriate by the Contract Officer. MassDOT shall coordinate signage installation and removal.

MassDOT shall hang signage on the front and side windows at all sixteen (16) toll lanes at Interchange 19. The front window poster is 24"L x 36"W. The side window poster is 24"L x 20"W. Signage will be posted on the outside of the windows. Signage should be printed by the Sponsor as a poster. MassDOT will hang signage using double-sided adhesive to temporarily stick posters to toll booth windows.

Fast Lane Website Notice

MassDOT will allow a notice on its official website, featuring the Sponsorship Activities. MassDOT's Contract Officer shall have final determination as to the duration and content of the website notice, in the Contract Officer's sole discretion. The website notice will be created by MassDOT employees.

2. Sponsorship Materials

The Sponsor shall provide, at its sole expense, all materials to be dispersed by participating toll collectors during the Sponsorship Activities that are reasonably determined to be appropriate by MassDOT.

The Sponsor shall provide eighty (80) hats and eighty (80) shirts to MassDOT, which hats and shirts shall become the property of MassDOT upon delivery. The Sponsor shall deliver said items at a date, time, and location that is reasonably designated by MassDOT's Contract Officer. Said items shall be approved in advance by MassDOT's Contract Officer, in their sole discretion.

3. Term and Termination

This Agreement shall begin as of the Effective Date and shall terminate automatically upon the delivery of written acknowledgement from MassDOT to the Sponsor that all money due under this Agreement from the Sponsor to

MassDOT has been received and no money is due to either Party under this Agreement, unless otherwise terminated by MassDOT in accordance with this Agreement.

Neither Party shall be liable to the other nor deemed to be in breach of this Agreement for failure or delay in rendering performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to: Acts of God or the public enemy, wars, fires, floods, epidemics, quarantine restrictions, strikes, unforeseen freight embargoes, or unusually severe weather. MassDOT shall not be liable to the Sponsor nor deemed in breach of this Agreement for delay in rendering performance arising out of causes that MassDOT determines, in MassDOT's sole discretion, justify such delay in performance, including, but not limited to, unusual traffic congestion and/or a public safety issue. Should the Sponsorship Activities be cancelled due to such unforeseeable circumstances, neither Party will be held responsible and all money paid under this Agreement will be reimbursed, with any such reimbursement reduced by the amount of any costs incurred by MassDOT in relation to this Agreement.

4. MassDOT's Contract Officer

MassDOT's Contract Officer is MassDOT's Director of Business Development. The Contract Officer is responsible for monitoring the Sponsor's performance under this Agreement.

5. Representations

The Sponsor affirms that MassDOT has made no representations or promises with respect to the Sponsorship Activities, or the condition thereof, or the making or entry into this Agreement, except as expressly set forth in this Agreement, and that no claims or liability shall be asserted by the Sponsor against MassDOT for, and MassDOT shall not be liable by reason of, breach of any representations or promises not expressly stated in this Agreement.

6. Release of Liability

The Sponsor hereby releases MassDOT, its employees, agents, and consultants from responsibility for any losses and/or damages related to the this Agreement, unless solely caused by MassDOT, and the Sponsor covenants and agrees that it will not assert or bring, nor cause its agents or consultants or any third party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or any other claim) (hereinafter the "Claims") against MassDOT.

7. Indemnification

In clarification of the above release and covenants, and not in limitation of them, the Sponsor shall defend, indemnify, and hold harmless MassDOT, its directors, servants, and employees from and against any and all claims, liability, losses, third party claims, damages, costs, or expenses (including reasonable attorneys' and experts' fees) arising out of or relating to, in any manner, this Agreement and/or actions taken in relation to this Agreement by the Sponsor, its agents, servants, employees, employers, parties involved in any contracts or appointments of agency with the Sponsor, or subcontractors under this Agreement, provided that any such claims, liability, losses, third party claims, damages, costs, or expenses are attributable to bodily injury; personal injury; pecuniary injury; damage to real or tangible personal property, including loss of use resulting therefrom; injury attributable to breach of contract and any related damages; advertising injury including copyright infringement, trademark infringement, piracy, misappropriation of ideas; and any other related torts, and is caused in whole or in part by any act of the Sponsor, its agents, servants, employees, employers, parties involved in any contracts or appointments of agency with the Sponsor, or subcontractors; including, but not limited to, intentional or negligent acts or omissions of the Sponsor, its agents, servants, employees, employers, parties involved in any contracts or appointments of agency with the Sponsor, or subcontractors.

The foregoing express obligations of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to MassDOT that would otherwise exist. MassDOT shall give the Sponsor prompt and timely notice of any claims, threatened or made, or any law suit instituted against it which could result in a claim for indemnification hereunder. The extent of this Agreement of indemnification shall not be limited by any obligation or any term or condition of any insurance policy pertaining to this Agreement. The obligations set forth above shall survive the expiration or termination of this Agreement.

8. Insurance

- a. The Sponsor shall purchase and maintain throughout the term of this Agreement adequate insurance coverage, to include, but not be limited to, the following type and amount of coverage:

Commercial General Liability Insurance including contractual liability specifically covering this Agreement, products/completed operations coverage, and personal injury coverage, written on an occurrence form, with combined limits for bodily injury, personal injury, and property damage of at least two million dollars (\$2,000,000.00) per occurrence. The policy must be endorsed to include MassDOT as an additional insured.

Vehicle Liability Insurance covering each vehicle (owned and/or non-owned and/or operated under the direction of Sponsor or its affiliates) entering MassDOT property in an amount not less than \$1M per accident, combined single limit for bodily injury and property damage.

Workers compensation insurance covering employees, if any, in such amounts as are required by law. The policy should include Employers Liability coverage subject to a limit of \$500,000 each accident/\$500,000 each employee/\$500,000 policy limit.

- b. All insurance maintained by the Sponsor pursuant to this Agreement shall be written by insurance companies licensed to do business in the Commonwealth of Massachusetts. If the Sponsor determines that any such insurance needs to be placed with surplus lines carriers not licensed by the Commonwealth of Massachusetts, written permission from MassDOT is required. All insurance companies to be used by the Sponsor must have a Best's Rating of not less than A- and be reasonably acceptable to MassDOT.
- c. If requested by MassDOT in writing, the Sponsor will furnish certified copies of the aforementioned policies to MassDOT's designated representative.
- d. All insurance maintained by the Sponsor shall provide that insurance for the benefit of MassDOT shall be primary and MassDOT's own insurance shall be non-contributing.
- e. The Sponsor shall provide MassDOT with certificates of insurance evidencing the above referenced insurance policies within ten (10) days of the execution of this Agreement.
- f. The policy required herein must be endorsed to provide that the insurer waives all rights of subrogation against MassDOT.
- g. Each insurance policy except workers compensation shall name MassDOT as an additional insured and should specifically state that such policies are primary and non contributory.

9. **Proprietary Rights**

All intellectual or proprietary property and information, supplied or developed by either Party shall be and remain the sole and exclusive property of the Party who supplied or developed same. After the termination or expiration of this Agreement, neither Party shall be able to use any such property and information belonging to the other Party, without the express written consent of an authorized representative of the Party that owns the property and information.

Sponsor grants to MassDOT the limited, royalty-free, non-exclusive, non-sublicensable, revocable right to use trademarks, trade names, service marks, or logos owned by it ("Sponsor Marks") solely for the purposes of performing under this Agreement. Sponsor Marks, other intellectual property owned by Sponsor, and any and all rights therein, including, but not limited to, all goodwill arising from the use by MassDOT of the Sponsor Marks pursuant to the provisions of this Agreement shall inure to the benefit of and be the exclusive property of Sponsor. MassDOT shall use reasonable efforts to correct or discontinue any misuse of a Sponsor Mark upon receipt of written notice from Sponsor. Presentation of Sponsor Marks shall at all times be such that ownership of any particular trademark shall bear the "®" or "™" symbols where applicable. MassDOT hereby renounces ownership of and assigns to Sponsor any goodwill that accrues as the result of its use of Sponsor Marks.

10. Compliance with Laws

The Sponsor shall keep fully informed and comply with the provisions of all applicable federal, state, and local laws, rules, and regulations which in any manner affect this Agreement and those engaged or employed to provide the services described herein. The Sponsor shall indemnify, defend, and hold harmless MassDOT, its members, officers, employees, and agents from all fines, penalties, and liabilities imposed on MassDOT under any such laws, rules, and regulations, when the imposition of same is attributable to the failure of the Sponsor to keep fully informed and to comply with its obligations in this regard.

11. Choice of Law

This Agreement shall be deemed a Massachusetts contract to be governed by and construed under the laws of the Commonwealth of Massachusetts, notwithstanding any countervailing choice of law principles that might otherwise apply.

12. Assignment

The Sponsor shall not assign, in whole or in part, or otherwise transfer any interest in this Agreement without the prior written consent of MassDOT, which consent shall not be unreasonably withheld. MassDOT may assign, at any time and for whatever reason, any portion or all of this Agreement to any other person or entity, upon five (5) days written notice to the Sponsor.

13. No Personal Liability

Members or employees of MassDOT shall not be charged personally or held contractually liable by or to the Sponsor under any term or provision of this Agreement or because of any breach thereof.

14. Notice

Unless otherwise specified, any notice hereunder shall be in writing and shall be deemed delivered when given in person to either Party or deposited in the U.S. mail, postage prepaid, and addressed as follows:

To MassDOT: Director of Business Development
Massachusetts Department of Transportation
10 Park Plaza, Suite 3150
Boston, Massachusetts 02116

With a copy to: Office of the General Counsel
Massachusetts Department of Transportation
10 Park Plaza, Suite 3150
Boston, Massachusetts 02116

To the Sponsor: Zappos Development, Inc.
Attn: Brand marketing
2280 Corporate Circle #100
Henderson, Nevada 89074

With a copy to: Legal Department
Zappos Development, Inc.
2280 Corporate Circle #100
Henderson, Nevada 89074

In the event of any dispute arising under this Agreement, of any kind, including any lawsuit(s), the Sponsor hereby agrees to accept service of process at the address contained in this section, which service the Sponsor agrees shall be valid and complete upon mailing via first class mail.

15. Severability

If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then both Parties shall be relieved of all obligations under that provision. The remainder of this Agreement shall be enforced to the fullest extent permitted by law.

16. Headings and Interpretations

The headings used herein are for reference and convenience only and shall not be a factor in the interpretation of this Agreement.

17. **Amendments**

No amendment or extensions to this Agreement shall be effective unless it is in writing and signed by authorized representatives of both Parties. Said amendment or extensions shall be incorporated into and made a part of this Agreement.

18. **Waivers**

The obligations and conditions imposed by this Agreement can be waived only by written agreement. Forbearance or indulgence by a Party shall not be available to the Party under this Agreement.

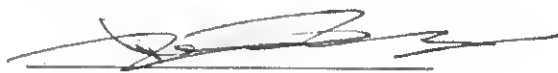
19. **Entire Agreement**

This Agreement, including any attachments and documents incorporated by reference, contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior agreements, representations, negotiations, and undertakings not set forth or incorporated herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by its respective authorized officers or partners as of the date first written above.

MASSACHUSETTS DEPARTMENT
OF TRANSPORTATION

ZAPPOS DEVELOPMENT, INC.



Name: Frank DePaola

Name: Arun Rajan

Title: Highway Division Administrator

Title: Vice President

Date: 11/23/2011

Date: 11-15-11

**Massachusetts Department of Transportation
Sponsorship Agreement
With
NorBella, Inc.**

This Agreement ("Agreement") is dated as of the 15th day of June 2012, (the "Effective Date") by and between the Massachusetts Department of Transportation, a body politic and corporate and public instrumentality organized and existing under the laws of the Commonwealth of Massachusetts, having an address of 10 Park Plaza, Suite 4160, Boston, Massachusetts 02116 ("MassDOT"), and NorBella Inc., having an address of 46 Plympton Street, Boston, Massachusetts 02118 (the "Sponsor"), collectively (the "Parties").

WHEREAS, NorBella is a media strategy agency that represents the Boston Symphony Orchestra;

WHEREAS, MassDOT is responsible for certain roadways within the Commonwealth of Massachusetts, including the portion of roadway where the toll booth at Interchange 19 on the Massachusetts Turnpike is located, pursuant to Chapter 6C of the Massachusetts General Laws, G.L. c. 6C, *et seq.*;

WHEREAS, the Sponsor desires to host a promotional marketing activity by paying for all tolls and Fast Lane charges incurred by vehicles passing through toll Interchange 19 on the Massachusetts Turnpike, in both the east bound and west bound directions, on Friday, June 22, 2012, between the hours of 5:00 p.m. and 6:00 p.m. Eastern time; and

WHEREAS, the Parties now desire to enter into this Agreement to describe the nature and scope of the Sponsorship Activities and related matters.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Sponsorship Activities

The Sponsor shall pay for all tolls and Fast Lane charges incurred by all vehicles passing through toll Interchange 19 on the Massachusetts Turnpike, in both the east bound and west bound directions, on Friday, June 22, 2012, between the hours of 5:00 p.m. and 6:00 p.m. Eastern time.

Compensation shall be paid from the Sponsor to MassDOT in accordance with this Agreement.

The Sponsor shall, at Sponsor's sole expense, pay all costs associated with the Sponsorship Activities, except where expressly otherwise provided in this Agreement.

All payments shall be made in advance of the Sponsorship Activities, by Sponsor to MassDOT. The estimated total due in advance from Sponsor to MassDOT is Sixteen-thousand five hundred dollars and zero cents (\$16,500.00). All payments required to be made in advance from Sponsor to MassDOT shall be made and received by MassDOT's Contract Officer no less than ten (10) days in advance of the Sponsorship Activities. Payments for each item under this Agreement shall be made in the form of separate checks.

Sponsorship Fee

The Sponsor shall pay to MassDOT a one-time fee in the amount of \$5,000.00.

Tolls and Fast Lane Charges

The Sponsor shall deliver payment in the amount of \$16,500.00, as estimated payment for the tolls and Fast Lane charges incurred during the Sponsorship Activities. No later than ten (10) days after the close of the sponsorship Activities, MassDOT shall provide written certification from the Contract officer certifying the amount of tolls and the Electronic Toll Collection payments incurred during the Sponsorship Activities (the "Certification"). In the event that the actual cost of the tolls and Fast Lane charges during the Sponsorship Activities exceeds the amount of \$16,500.00, MassDOT shall so notify the Sponsor in writing, and the Sponsor shall deliver payment in the amount of the excess costs to MassDOT's Contract Officer no later than three (3) business days after receipt of the notification to the Sponsor. In the event that the tolls and Fast Lane charges are less than the amount of \$16,500.00, MassDOT shall refund the Sponsor any difference, minus any other money owed from the Sponsor to MassDOT under this Agreement, if any, no later than three (3) business days after receipt of the notification.

Police Details

The Sponsor shall pay to MassDOT the entire cost of all police detail(s), which are determined to be necessary in MassDOT's sole discretion, in relation to the Sponsorship Activities. Unless MassDOT determines otherwise, there shall be two (2) police details, lasting a duration of four (4) hours each. The Sponsor shall deliver payment in the amount of \$500.00, as payment for the police detail(s). In the event that the cost of the police detail(s) exceeds the amount of \$500.00, the Sponsor shall deliver payment in the amount of the excess cost to MassDOT's Contract Officer no later than three (3) business days after the close of the Sponsorship Activities. In the event that the cost of the police detail(s) is less than the amount of \$500.00, MassDOT will refund to the Sponsor any difference, minus any other monies that may be owed from the Sponsor to MassDOT under this Agreement no later than five (5) business days after close of the Sponsorship Activities. MassDOT shall coordinate the State Police details provided in relation to this Agreement.

Signage

MassDOT shall have the right to reasonable approval as to content and sole discretion as to location, and all other aspects of the signage posted in relation to the Sponsorship Activities.

The Sponsor shall produce, at its sole cost, temporary signage for use during the Sponsorship Activities. All aspects of said temporary signage, including, but not limited to, its volume, shape, size, color, intended placement, and content must be approved in advance by MassDOT and its Contract Officer. The Sponsor shall pay to MassDOT the entire cost of overtime labor of MassDOT's employees, in connection with installation and removal of the signage. The Sponsor shall deliver payment in the amount of \$1,000.00, as payment for said labor in relation to the temporary signage for the Sponsorship Activities.

MassDOT shall supply two (2) portable safety signage boards, one (1) in the east bound direction and one (1) in the west bound direction, during the Sponsorship Activities. The portable safety signage boards shall read "Tolls Paid by Tanglewood 75th Anniversary," or contain some other similar content, as determined to be appropriate by the Contract Officer. MassDOT shall coordinate signage installation and removal.

MassDOT shall hang signage on the front and side windows at all sixteen (16) toll lanes at Interchange 19. The size and content of such signage shall be subject to the review and approval of MassDOT's Contract Officer. Signage will be posted on the outside of the windows. Signage should be printed by the Sponsor as a poster. MassDOT will hang signage using double-sided adhesive to temporarily stick posters to toll booth windows.

Fast Lane Website Notice

MassDOT will allow a notice on its official website, featuring the Sponsorship Activities. MassDOT's Contract Officer shall have final determination as to the duration and content of the website notice, in the Contract Officer's sole discretion. The website notice will be created by MassDOT employees.

2. Sponsorship Materials

The Sponsor shall provide, at its sole expense, all materials to be dispersed by participating toll collectors during the Sponsorship Activities that are reasonably determined to be appropriate by MassDOT.

The Sponsor shall provide fifty (50) shirts to MassDOT, which shirts shall become the property of MassDOT upon delivery. The Sponsor shall deliver said items at a date, time, and location that is reasonably designated by MassDOT's Contract Officer. Said items shall be approved in advance by MassDOT's Contract Officer, in their sole discretion.

3. Term and Termination

This Agreement shall begin as of the Effective Date and shall terminate automatically upon the delivery of written acknowledgement from MassDOT to

the Sponsor that all money due under this Agreement from the Sponsor to MassDOT has been received and no money is due to either Party under this Agreement, unless otherwise terminated by MassDOT in accordance with this Agreement.

Neither Party shall be liable to the other nor deemed to be in breach of this Agreement for failure or delay in rendering performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to: Acts of God or the public enemy, wars, fires, floods, epidemics, quarantine restrictions, strikes, unforeseen freight embargoes, or unusually severe weather. MassDOT shall not be liable to the Sponsor nor deemed in breach of this Agreement for delay in rendering performance arising out of causes that MassDOT determines, in MassDOT's sole discretion, justify such delay in performance, including, but not limited to, unusual traffic congestion and/or a public safety issue. Should the Sponsorship Activities be cancelled due to such unforeseeable circumstances, neither Party will be held responsible and all money paid under this Agreement will be reimbursed, with any such reimbursement reduced by the amount of any costs incurred by MassDOT in relation to this Agreement.

4. MassDOT's Contract Officer

MassDOT's Contract Officer is MassDOT's Director of Business Development. The Contract Officer is responsible for monitoring the Sponsor's performance under this Agreement.

5. Representations

The Sponsor affirms that MassDOT has made no representations or promises with respect to the Sponsorship Activities, or the condition thereof, or the making or entry into this Agreement, except as expressly set forth in this Agreement, and that no claims or liability shall be asserted by the Sponsor against MassDOT for, and MassDOT shall not be liable by reason of, breach of any representations or promises not expressly stated in this Agreement.

6. Release of Liability

The Sponsor hereby releases MassDOT, its employees, agents, and consultants from responsibility for any losses and/or damages related to the this Agreement, unless solely caused by MassDOT, and the Sponsor covenants and agrees that it will not assert or bring, nor cause its agents or consultants or any third party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or any other claim) (hereinafter the "Claims") against MassDOT.

7. Indemnification

In clarification of the above release and covenants, and not in limitation of them, the Sponsor shall defend, indemnify, and hold harmless MassDOT, its directors, servants, and employees from and against any and all claims, liability, losses, third party claims, damages, costs, or expenses (including reasonable attorneys' and experts' fees) arising out of or relating to, in any manner, this Agreement and/or actions taken in relation to this Agreement by the Sponsor, its agents, servants, employees, employers, parties involved in any contracts or appointments of agency with the Sponsor, or subcontractors under this Agreement, provided that any such claims, liability, losses, third party claims, damages, costs, or expenses are attributable to bodily injury; personal injury; pecuniary injury; damage to real or tangible personal property, including loss of use resulting therefrom; injury attributable to breach of contract and any related damages; advertising injury including copyright infringement, trademark infringement, piracy, misappropriation of ideas; and any other related torts, and is caused in whole or in part by any act or omission of the Sponsor, its agents, servants, employees, employers, parties involved in any contracts or appointments of agency with the Sponsor, or subcontractors; including, but not limited to, intentional or negligent acts or omissions of the Sponsor, its agents, servants, employees, employers, parties involved in any contracts or appointments of agency with the Sponsor, or subcontractors.

The foregoing express obligations of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to MassDOT that would otherwise exist. MassDOT shall give the Sponsor prompt and timely notice of any claims, threatened or made, or any law suit instituted against it which could result in a claim for indemnification hereunder. The extent of this Agreement of indemnification shall not be limited by any obligation or any term or condition of any insurance policy pertaining to this Agreement. The obligations set forth above shall survive the expiration or termination of this Agreement.

8. Insurance

- a. The Sponsor shall purchase and maintain throughout the term of this Agreement adequate insurance coverage, to include, but not be limited to, the following type and amount of coverage:

- I. Commercial General Liability Insurance including contractual liability specifically covering this Agreement, products/completed operations coverage, and personal injury coverage, written on an occurrence form, with combined limits for bodily injury, personal injury, and property damage of at least one million dollars

(\$1,000,000.00) per occurrence. The policy must be endorsed to include MassDOT as an additional insured.

2. Vehicle Liability Insurance covering each vehicle (owned and/or non-owned and/or operated under the direction of Sponsor or its affiliates) entering MassDOT property in an amount not less than one million dollars (\$1,000,000.00) per accident, combined single limit for bodily injury and property damage.

3. Workers compensation insurance covering employees, if any, in such amounts as are required by law. The policy should include Employers Liability coverage subject to a limit of \$500,000 each accident/\$500,000 each employee/\$500,000 policy limit.

- b. All insurance maintained by the Sponsor pursuant to this Agreement shall be written by insurance companies licensed to do business in the Commonwealth of Massachusetts. If the Sponsor determines that any such insurance needs to be placed with surplus lines carriers not licensed by the Commonwealth of Massachusetts, written permission from MassDOT is required. All insurance companies to be used by the Sponsor must have a Best's Rating of not less than A- and be reasonably acceptable to MassDOT.
- c. If requested by MassDOT in writing, the Sponsor will furnish certified copies of the aforementioned policies to MassDOT's designated representative.
- d. All insurance maintained by the Sponsor shall provide that insurance for the benefit of MassDOT shall be primary and MassDOT's own insurance shall be non-contributing.
- e. The Sponsor shall provide MassDOT with certificates of insurance evidencing the above referenced insurance policies within ten (10) days of the execution of this Agreement.
- f. The policy required herein must be endorsed to provide that the insurer waives all rights of subrogation against MassDOT.
- g. Each insurance policy except workers compensation shall name MassDOT as an additional insured and should specifically state that such policies are primary and non contributory.

9. Proprietary Rights

All intellectual or proprietary property and information, supplied or developed by either Party shall be and remain the sole and exclusive property of the Party who supplied or developed same. After the termination or expiration of this

13. No Personal Liability

Members or employees of MassDOT shall not be charged personally or held contractually liable by or to the Sponsor under any term or provision of this Agreement or because of any breach thereof.

14. Notice

Unless otherwise specified, any notice hereunder shall be in writing and shall be deemed delivered when given in person to either Party or deposited in the U.S. mail, postage prepaid, and addressed as follows:

To MassDOT: Director of Business Development
Massachusetts Department of Transportation
10 Park Plaza, Suite 3150
Boston, Massachusetts 02116

With a copy to: Office of the General Counsel
Massachusetts Department of Transportation
10 Park Plaza, Suite 3150
Boston, Massachusetts 02116

To the Sponsor: NorBella, Inc.
46 Plympton Street
Boston, Massachusetts 02118

In the event of any dispute arising under this Agreement, of any kind, including any lawsuit(s), the Sponsor hereby agrees to accept service of process at the address contained in this section, which service the Sponsor agrees shall be valid and complete upon mailing via first class mail.

15. Severability

If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then both Parties shall be relieved of all obligations under that provision. The remainder of this Agreement shall be enforced to the fullest extent permitted by law.

16. Headings and Interpretations

The headings used herein are for reference and convenience only and shall not be a factor in the interpretation of this Agreement.

17. **Amendments**

No amendment or extensions to this Agreement shall be effective unless it is in writing and signed by authorized representatives of both Parties. Said amendment or extensions shall be incorporated into and made a part of this Agreement.

18. **Waivers**

The obligations and conditions imposed by this Agreement can be waived only by written agreement. Forbearance or indulgence by a Party shall not be available to the Party under this Agreement.

19. **Entire Agreement**

This Agreement, including any attachments and documents incorporated by reference, contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior agreements, representations, negotiations, and undertakings not set forth or incorporated herein.

20. **Execution of Agreement/Counterparts**

The Agreement may be executed (by original or facsimile signatures) in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by its respective authorized officers or partners as of the date first written above.

MASSACHUSETTS DEPARTMENT
OF TRANSPORTATION

NORBELLA, INC.





Name: Frank DePaola

Name: ROBERT C DEWINGER

Title: Highway Division Administrator

Title: MPDIA DIRECTOR

Date:

6/8/12

Date:

JUNE 1, 2012